

BEFORE THE STATE BOARD OF EQUALIZATION  
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of    )  
  )  
CITICORP LEA SING, INC.    .)

For Appellant:     Stanley Nitzburg  
                              Vice President

For Respondent:    Bruce W. Walker  
                              Chief Counsel

Timothy W. Boyer  
Counsel

OPINION

This appeal is made pursuant to section 26077 of the Revenue and Taxation Code from the action of the Franchise Tax Board in denying the claims of Citicorp Leasing, Inc. , for refund of penalties in the amounts of \$3,338.09 and \$3,363.09 for the taxable years 1971 and 1972, respectively.

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The sole issue for our determination is whether respondent's imposition of late filing penalties was proper.

Appellant, a Delaware corporation headquartered in New York, commenced doing business in California in August 1971. Appellant elected to end its first income year on December 31, 1971, which, pursuant to Revenue and Taxation Code section 25401, required it to file its first California franchise tax return by March 15, 1972. In addition, section 23222 of the Revenue and Taxation Code requires a commencing corporation whose first taxable year is less than twelve months to file a return and prepay tax for its second taxable year at the time the tax payment for the first year is due. In this case, the return and prepayment for the second taxable year were due by March 15, 1972. Appellant failed to file the required tax returns and pay the amounts due until December 13, 1972. Accordingly, respondent assessed late filing penalties pursuant to section 25931 of the Revenue and Taxation Code, which states:

If any taxpayer fails to make and file a return required by this part on or before the due date of the return or the due date as extended by the Franchise Tax Board, then, unless it is shown that the failure is due to reasonable cause and not due to willful neglect, 5 percent of the tax shall be added to the tax for each month or fraction thereof elapsing between the due date of the return and the date on which filed, but the total addition shall not exceed 25 percent of the tax. In the case of a commencing corporation, the penalty shall apply to all tax accruable on the due date of the return. The amount so added to the tax shall be due and payable upon notice and demand from the Franchise Tax Board.

Appellant paid the penalties and filed timely claims for refund with respondent. Respondent's denial of those claims gave rise to this appeal.

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Appellant contends that the untimely filing of its California tax returns was due to reasonable cause and not willful neglect. In support of its position appellant argues that it reasonably believed that the accountant appointed to handle the tax reporting functions of the corporation was qualified to do a competent job, and it only discovered that he was not so qualified after his failure to comply with California's tax reporting requirements. Appellant states that during the period in question it expanded its operations from eighteen to fifty states, which vastly increased the accountant's reporting burdens and caused him to miss the filing date in California. Appellant urges, however, that after learning of the accountant's oversight it did everything within its power to rectify the mistake, including filing the delinquent returns prior to receipt of any notification from respondent.

It is well established that appellant has the burden of proving that the late filing of its tax return was due to reasonable cause and not due to willful neglect. (C. Fink Fischer, 50 T. C. 164. ) Both conditions must exist. (Rogers Hornsby, 26 B. T. A. 591. ) On the record before us, there appears to have been no willful neglect on the part of appellant. Consequently, the only question remaining is whether the requisite reasonable cause was present. To establish the existence of reasonable cause the taxpayer must show that the failure to file occurred despite the exercise of ordinary business care and prudence. (Sanders v. Commissioner, 225 F. 2d 629, cert. denied, 350 U. S. 967 [100 L. Ed. 839]; Appeal of Loew's San Francisco Hotel Corp., Cal. St. Bd. of Equal. , Sept. 17, 1973. )

In the case at hand, while appellant might well have had good reason to believe that its employee was qualified to do a competent job at the time of his appointment, this fact does not relieve appellant of the ultimate responsibility for the timely filing of its tax returns. (See Malcolm Clifton Davenport, 6 T. C. 62; Appeal of William T. and Joy P. Orr, Cal. St. Bd. of Equal. , Feb. 5, 1968. ) Likewise, the expansion of appellant's business which allegedly contributed to the delay in filing does not establish reasonable cause. (First County National Bank & Trust Co. of Woodbury, New Jersey v. United States, 291 F. Supp. 837;

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Herbert W. Dustin, 53 T. C. 491; Appeal of Loew's San Francisco Hotel Corp., supra. ) Finally, although appellant filed the delinquent returns prior to receipt of any notification from respondent, that filing did not occur until nearly nine months after the due date of those returns. In our opinion, a nine-month delay in discovering the untimeliness of tax returns does not demonstrate the exercise of ordinary business care and prudence necessary to establish reasonable cause.

Based upon the foregoing, we must sustain respondent's imposition of penalties in this case.

ORDER

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 26077 of the Revenue and Taxation Code, that the action of the Franchise Tax Board in denying the claims of Citicorp Leasing, Inc., for refund of penalties in the amounts of \$3,338.09 and \$3,363.09 for the taxable years 1971 and 1972, respectively, be and the same is hereby sustained.

Done at Sacramento, California, this 6th day of January, 1976, by the State Board of Equalization.

*Sullivan W. Beards*, Chairman  
*Paul H. Harris*, Member  
*George R. Kelley*, Member  
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\_\_\_\_\_, Member

ATTEST: *W. W. Dunlop*, Executive Secretary